



Exclusions from FFCRA Eligibility for Emergency Responders and Essential Government Functions

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Local governments are permitted to exclude employees from the FFCRA [1] based on the employee's status as an Emergency Responder, or as providing Essential Government Functions. The US. Department of Labor (DOL) has the authority to exclude certain health care providers and emergency responders from the definition of employee under sections of the Act, and the Governor has the authority to exclude those providing essential government functions.

From the DOL FFCRA Q&A [2]:

57 - Who is an emergency responder? For the purposes of Employees who may be excluded from both Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

Governor Lee issued guidance via **Executive Order 22** [3] on which positions constitute Essential Government Functions to further guide cities on identifying which positions may be excluded from the FFCRA provisions in order that all critical infrastructure remains operational, and government entities and businesses will continue providing important and essential services. The Governor's expansion of defined Essential Government Functions can be found in the document titled Attachment A to Executive Order No. 22 [3] (page 8, item #5).

Once a municipality determines which functions are to be categorized as essential, and which emergency responders are required to provide and/or support the provision of such functions, it should take appropriate action under its particular form of government to document those positions it is excluding from coverage. The DOL advises that employers be judicious when determining exclusions, and do so based on actual job functions.

Links:

[1] <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

[2] <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

[3] <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>

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